

DECISION



12907 PL-11  
Mr. Feldman  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-196137.2

DATE: February 20, 1980

MATTER OF: J & A, Inc. DL603940

DIGEST:

[Protest of subcontract award] is dismissed because Government's approval of subcontracts is insufficient to establish Government actively participated in or controlled subcontractor selection, thereby invoking GAO review.

J & A, Inc. initially protested any award of a contract under invitation for bids (IFB) 045-CC issued by Husky Oil NPR Operations Incorporated (Husky). This solicitation subsequently was canceled and Husky issued IFB 052CC for the same work. Husky is a prime contractor under contract No. 14-08-0001-16474 with the Department of the Interior, United States Geological Survey (USGS). AGC00033 DL603941 AGC00215

J & A maintains that the subcontract solicitation did not comply with section 7(b) of the Indian Self Determination and Education Assistance Act, 25 U.S.C. 450e(b)(2) (1976) (Act) and other laws dealing with socially and economically disadvantaged firms, and that Husky did not provide for open bidding procedures. J & A requests that it receive an award.

In Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166, our Office held that we would consider protests concerning the award of subcontracts by Government prime contractors only under certain clearly delineated circumstances. These include, among others, situations where the Government so actively participates in the subcontractor selection process as to effectively

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cause or control selection, and where the prime contractor acts as a purchasing agent of the Government.

J & A contends that the Interior Department through USGS is intimately involved in the subcontract selection process and that Husky is an agent of USGS.

There is no provision in Husky's prime contract with Interior which expressly makes the prime contractor the agent of the Government. See Universal Aircraft Parts, Inc., B-187806, January 11, 1979, 79-1 CPD 14. Husky's procurement of the power generation station appears to comport with the prime contract's requirement of constructing "buildings, \* \* \* power lines \* \* \* to carry out the scope of work of this contract." The fact that the power station may remain after the expiration of Husky's contract does not make Husky a purchasing agent of the Government. Rather, Husky is an independent contractor responsible for conducting an exploratory drilling program at the National Petroleum Reserve in Alaska. Interior reports that USGS merely approves or disapproves the prime contractor's proposed subcontracts. Our Office has consistently held that the approval of a proposed subcontract award does not constitute sufficient involvement to justify our consideration of a protest concerning such award. Pen Foam Insulation Co., B-192764, September 26, 1978, 78-2 CPD 233. Therefore, we will not review the issues raised by J&A.

We point out, however, that there appears to be no violation of section 7(b) of the Act here because generally that law applies to those prime contracts or subcontracts which are for the benefit of Indians. 25 U.S.C. 450e(b)(2) (1976). Clearly, Husky's prime contract for exploratory oil drilling is not within the ambit of the Act. In any event, even if Husky's prime contract fell within the scope of the Act, we have held that the law does not require award of subcontracts to Indian-owned firms. Department of Interior-request for advance decision, 58 Comp. Gen. 160 (1978), 78-2 CPD 432.

The protest is dismissed.

*Milton J. Socolar*

for Milton J. Socolar  
General Counsel